

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 1:06CV01360-ESH
)	
MITTAL STEEL COMPANY N.V.,)	Filed: February 5, 2008
)	
<i>Defendant.</i>)	
)	

**MEMORANDUM IN SUPPORT OF MOTION OF THE
UNITED STATES TO EXTEND TRUSTEE’S TERM**

This Memorandum is filed in support of the Motion of the United States to Extend the Trustee’s Term in the above-captioned case. The United States recommends that the Court extend for five months the trust and term of the Trustee, Joseph G. Krauss of Washington, D.C., to permit him to complete the divestiture of the Sparrows Point steel mill according to the schedule and plan described and recommended in the Trustee’s Fourth Report. This report was filed under seal with the Court on January 30, 2008. A redacted version of the report is attached as Exhibit 1 to the Declaration of Lowell Stern.

I. RECOMMENDATION OF THE UNITED STATES

A. Purpose Of The Final Judgment

The Complaint filed by the United States alleged that the acquisition by Mittal of Arcelor S.A. (“Arcelor”), including its Canadian subsidiary Dofasco Inc. (“Dofasco”) would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, because it would substantially reduce competition

among manufacturers of tin mill products in the eastern United States. The Complaint sought adjudication that the acquisition of Arcelor by Mittal would violate Section 7 of the Clayton Act and further sought permanent injunctive relief. The Final Judgment filed with the Complaint and entered by this Court on May 23, 2007, memorializes the parties' agreement to settle the case through the divestiture of one of Mittal's three tin mills located in the eastern United States or Canada. The essence of the settlement is the prompt and certain divestiture of a tin mill to assure that competition in the manufacture, distribution and sale of tin mill products in the eastern United States is preserved. To accomplish this objective, Section IV(B) of the Final Judgment requires defendant Mittal to "use its best efforts to divest the [Sparrows Point facility] as expeditiously as possible" to "an Acquirer or Acquirers acceptable to the United States in its sole discretion." Final Judgment ¶ IV(B).

B. The Unsuccessful Sale To Bethlehem Acquisition Co.

On August 1, 2007, Mittal and Bethlehem Acquisition Co. (renamed "E2") executed an agreement for the purchase and sale of Sparrows Point (the "E2 Agreement"). E2 was a joint venture whose members included Esmark Inc., Wheeling-Pittsburgh Steel Corporation, Industrial Union of Donbass and Companhia Vale do Rio Doce ("CVRD"). The United States immediately sought the appointment of Joseph G. Krauss as Trustee because the United States recognized that: (1) the sale to E2 would not be completed by the August 6, 2007 deadline established by the Court; and (2) the E2 Agreement was subject to certain approvals and conditions, including some relating to the financing of the purchase price. The United States was concerned that the objective of the Final Judgment, the preservation of competition, would be jeopardized if the E2 Agreement did not proceed to closing.

The Order appointing the Trustee expressly provided that the Trustee could discharge his duties by completing the divestiture pursuant to the E2 Agreement. After his appointment, the Trustee determined that a sale pursuant to the E2 Agreement would likely provide the most timely and efficient way to complete the divestiture, and the United States agreed. However, the E2 Agreement did not close because E2 was unable to obtain financing and did not reach agreement with the labor union representing workers at the facility. Trustee's Fourth Report ¶ 2, Ex. 1, ¶ 2. The failure of the sale stemmed only from E2's and Mittal's inability to close that particular deal; Sparrows Point remains a profitable and desirable steel-making facility.

C. Recommendation of the United States to Extend Trustee's Term For Five Months

The purpose of the trust under the Final Judgment is to divest the Sparrows Point facility to a purchaser demonstrated to the United States's satisfaction as having the intent and capability, including the necessary managerial, operational, and financial capability, of competing effectively in the manufacture, distribution and sale of tin mill products in the eastern United States. The United States sought the appointment of the Trustee to effect the divestiture without delay in the event Mittal's sales agreement with E2 did not close.

The Trustee recommends that the trust and his term be extended so that he may complete the divestiture of Sparrows Point according the schedule described in the report. The United States finds the reasoning of the report to be compelling and urges the Court to extend the trust and term for five months. In particular, the United States believes that the Trustee has made diligent efforts to market the assets since the termination of the E2 Agreement. *See* Ex. 1, ¶¶ 3, 4.¹ The Trustee has retained an experienced investment bank, which believes that there will be no difficulty locating an interested and qualified buyer of the Sparrows Point plant. Indeed, since the

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February 2008, I caused a copy of the foregoing Memorandum in Support of Motion of the United States to Extend Trustee's Term to be mailed, by U.S. mail, postage prepaid, to the attorneys listed below:

_____/s/_____
Lowell R. Stern

For Mittal Steel Company N.V.:

Mark Leddy, Esquire
Brian Byrne, Esquire
Jeremy J. Calsyn, Esquire
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006